

Fax to: Ms. Laura Bose – EPA 415-947-3545

From: Adrain Taylor – Merrill Mining LLC 678-777-3509  
Jarrell Southall – Brown and Caldwell 602-617-3448, 602-222-4533)  
(602-222-4466 FAX)

In Re: BHP permit transfer

Total Pages including Cover: 10

Enclosed is the information we discussed by telephone today. Because BHP can cancel the purchase agreement immediately, we are quite anxious to wrap up this last point so we can go to closing.

Thank you very much for your assistance.

Enclosures:

2 letters from M. Zeleznik to J. Kline of BHP

State Mine Inspector Approval Letter (requires separate letter of credit for re-vegetation of a portion of the property only - \$33,750)

State Land Department Approval Letter

Gallagher and Kennedy email cover regarding AG/ADEQ approval of Temporary Cessation Notice wording

ADEQ letter with wording for Temporary Cessation Notice (from G&K email)

**[Verbal notice of ADEQ approval of form, substance, and amount of Letter of Credit was received today (\$1,066,000); awaiting written notice which will be forwarded ASAP]**



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX

75 Hawthorne Street  
San Francisco, CA 94105

Mail Code: WIR-9

August 22, 2001

John T Kline  
BHP Copper  
7400 N. Oracle Road  
Tucson, AZ 85704

Re: Transfer of Federal EPA UIC Permit

Dear Mr. Kline:

The purpose of this letter is to inform you that I have received the letter and enclosed information related to the proposed transfer of the Class III permit for copper solution mining facility in Florence, Arizona from BHP to Merrill Mining Inc. It appears that the requirements set forth in 40 CFR 144.38(b) have been met and that an automatic transfer of the permit would occur on August 27, 2001 which is 30 days after the letter from Merrill Mining Co. However, it should be noted that the release of the existing BHP financial responsibility mechanism will not occur until the new trusts and deeds have been signed by both parties and subsequently reviewed at this office.

I also wanted to inform you that we appreciate that the new company will use some of the same consultants for permit compliance related activities to minimize disruption of operations and our associated responsibilities. If you have any questions with anything in this letter or any other matter, please call me at directly at (415) 744-1924.

Sincerely,

Martin Zeleznik  
Environmental Protection Specialist

Received Time Aug.22. 2:59PM

10/04/01 THU 12:04 FAX  
10/04/01 11:28 FAX 415 744 1235

EPA REGION 9 SF



## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

## REGION IX

75 Hawthorne Street  
San Francisco, CA 94105

Mail Code: WTR-9

21622/9.6

October 4, 2001

John T. Kline  
BHP Copper  
7400 N. Oracle Road  
Tucson, AZ 85704

Re: Transfer of Federal EPA UIC Class III Permit #AZ39600001

Dear Mr. Kline:

The purpose of this letter is to inform you of some clarifications related to the proposed permit transfer of the Class III permit for copper solution mining facility in Florence, Arizona from BHP to Merrill Mining Inc. One of the areas of concern here is related to the letter dated August 28, 2001 from Pamela Gates of Bryan Cave LLP. In that letter, it is stated that "it is our understanding that the proposed financial assurance is acceptable to you." After receipt of that letter, I subsequently telephoned Ms. Gates and informed her that statement was inaccurate. I am now re-affirming in writing that the statement in Ms. Gates letter is an inaccurate statement to avoid any potential concerns or subsequent actions taken as the result of the misunderstanding. As I indicated previously, the proposed financial instrument consisting of the Deed of Trust dated August 20, 2001, is not acceptable for the operation of this EPA permitted UIC Class III facility.

The federal regulations and national Underground Injection Control (UIC) guidances list several financial instruments that are acceptable as a mechanism to demonstrate financial responsibility. A key aspect of the various acceptable instruments is the involvement of an independent financial institution.

One of my goals in evaluating this permit transfer process was the need to avoid duplication of effort of regulatory agencies. I believed that if the Arizona Department of Environmental Quality (ADEQ) was able to obtain an acceptable financial assurance mechanism to guarantee sufficient funds are available for the closure and post closure of the facility, I would be comfortable with that arrangement. However, it is now communicated to me that agreement has not been reached, and that some of the existing concerns are related to the cost of the closure plans. This is another area of concern. Although ADEQ may have removed the post closure requirement from their APP permit, it was not removed from the EPA permit and could not be done so without a major permit modification. I was working under the assumption that the financial assurance mechanisms were going to include post closure costs. It now appears that

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EPA may need to require a duplicative financial assurance mechanism if the post closure costs are no longer in the ADEQ permit.

One last area of concern is the lack of communication in this process. On August 26, 2001, I was under the impression that there were no outstanding issues with the other affected regulatory agency permit transfer requirements. I am now reading documents that as of October 2, 2001, covering post closure costs are still in question. I believe that there should have been more communication of these issues to the EPA.

The purpose of this letter is to clarify the status of the EPA permit transfer. The requirements for financial responsibility set forth in 40 CFR 144.52(a)(7) for a permit transfer as discussed in 40 CFR 144.38(b)(2) have not been satisfied. The required financial assurance mechanism must involve an independent financial institution and shall cover costs associated with post closure as outlined in the existing EPA permit.

If you have any questions with anything in this letter or any other matter, please call me at (415) 744-1924.

Sincerely,



Martin Zelezpik  
Environmental Protection Specialist

cc: Pamela Gate, Bryan Cave LLP  
Michele Robertson, ADEQ  
Adrain L. Taylor, Merrill Mining L.L.C.



Arizona State Mine Inspector

DOUGLAS K. MARTIN

1700 W. Washington, Suite 400

Phoenix, Arizona 85007-2805

(602) 542-5971

Fax (602) 542-5335

October 4, 2001

Adrain Taylor  
Senior Vice President  
Vanguard Properties Inc.  
3232 Cobb Parkway  
PMB 315  
Atlanta, Georgia 30339

Mr. Taylor:

In accordance with A.R.S. 27-928, this letter is to notify you that the proposed transfer of the Florence mined land reclamation plan from BHP Copper Inc., Florence Division to Merrill Mining L.L.C. has been approved. The Letter of Credit in the amount of \$33,750 is an acceptable financial assurance mechanism for reclamation of the current surface disturbances.

Criteria and procedure for modification and/or substantial changes to an approved plan are established under A.R.S. §27-927. Please be advised no substantial change to an approved reclamation plan may be implemented without the approval of the Arizona State Mine Inspector. Proposed changes must be submitted to the Mine Inspector for review and determination. Substantial changes and plan amendments may require a revision in the financial assurance mechanism and an additional fee.

The plan transfer date of October 4, 2001 establishes when an annual status report pursuant to R11-2-504 is to be submitted. This rule provides an annual status report must be submitted within sixty (60) days of the plan anniversary date and establishes the content required for this report. Merrill Mining L.L.C., Florence Project's first annual status report must be submitted no later than December 3, 2002.

If you have any questions, please call me at (602) 542-5971.

Sincerely,

Paul J. Caranzariti  
Reclamation Specialist

Jane Dee Hull  
Governor

Michael E. Anable  
State Land  
Commissioner

# Arizona State Land Department



1616 West Adams Street Phoenix, AZ 85007 [www.land.state.az.us](http://www.land.state.az.us)

November 2, 2001

Certified #7001 0360 0001 7365 5615

Mr. John Kline  
Project Manager, Florence Project  
BHP Copper, Inc.  
14605 E. Hunt Highway  
Florence, AZ 85232

Re: Assignment Application  
Mineral Lease Agreement 11-26500

Dear Mr. Kline:

On October 24, 2000 I met with Mr. Jarrell Southall, Supervising Scientist for the consulting firm of Brown and Caldwell, and Mr. Adrian Taylor, Senior Vice President for Merrill Mining, L.L.C. The purpose of the meeting was to discuss the pending assignment of the captioned lease to Florence Copper, Inc. As you are aware, Florence Copper, Inc. is to be acquired by Merrill Mining, Inc. at a time which will simultaneously effect transfer of interests to Merrill Mining, Inc. Based upon my discussions with Messrs. Jarrell Southall and Adrian Taylor, I am recommending approval of the assignment given the following understanding:

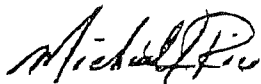
- It is the objective of the Department to capitalize on its mineral assets in a manner and along a time line which will allow the Department to realize income from both the mineral asset and future development opportunities. Inasmuch as Merrill Mining, Inc. and/or its parent company have the ability to manage residential opportunities, we do expect, given certain economic conditions and the implied covenants of the lease, that Merrill Mining, Inc. will proceed to diligently develop and produce from the mineral lease. Our approval in this instance, should not be construed as the Department being favorably disposed to condemnation of the mineral property.
- By letter dated January 3, 1997, BHP Copper, Inc. provided the Department a Letter of Financial Assurance in the amount of \$1,765,000. The letter as such, was required in contemplation of commencing operations on the property. In consideration of the present level of development being maintained for the foreseeable future, the Department is willing to reduce the amount that may be required for financial assurance. We may or may not however, be willing to assume a second position on financial guarantees provided to other agencies. I should, in this case, be able to provide you an answer during the week of November 5<sup>th</sup>.

Mr. John Kline  
November 2, 2001  
Page 2

- A reduction in the amount of the financial guarantee will require that operations remain at their current level until such time as is otherwise approved by the Department.

In closing, we find the lease to be in good standing and will proceed with an approval of the assignment.

Sincerely,



Michael J. Rice  
Manager, Minerals Section  
Natural Resources Division

MJR:kjm

cc: Ms. Pam Gates, Esq.  
Bryan Cave LLP  
Two North Central Avenue, Suite 2200  
Phoenix, Arizona 85004-4406

Mr. Jarrell Southall  
Supervising Scientist  
3636 N. Central Avenue, Suite 200  
Phoenix, Arizona 85012-1931

**Southall, Jarrell**

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**From:** Richard Bark [RAB@gknet.com]  
**Sent:** Monday, November 05, 2001 10:29 AM  
**To:** stephen.wetherell@ag.state.az.us; psgates@bryancavellp.com  
**Cc:** vanproperties01@aol.com; Southall, Jarrell; robertson.michele@ev.state.az.us; David Kimball III  
**Subject:** Final draft of BHP Temporary Cessation Notice for the Florence Project



KN2N041.DOC

Attached is the non-redlined version of the above referenced document that we have agreement on from the Attorney General's Office/ADEQ, BHP Copper and Merrill Mining. I have appreciated your cooperation. Please contact me if you have any questions or concerns. Thank you.

Richard A. Bark, Esq.  
Gallagher & Kennedy, P.A.  
2575 East Camelback Road  
Phoenix, AZ 85016-9225  
(602) 530-8288  
(602) 530-8500 (FAX)  
rab@gknet.com

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[BHP Copper Letterhead]

November \_\_, 2001

Karen L. Smith, Director  
Water Quality Division  
Arizona Department of Environmental Quality  
3033 N. Central Avenue  
Phoenix, Arizona 85008

Re: Notice of Temporary Cessation – Florence Project, A.P.P. No. 101704

Dear Ms. Smith:

BHP Copper Company's Florence Project is regulated by the Arizona Department of Environmental Quality ("ADEQ") pursuant to Aquifer Protection Permit No. 101704, as modified on May 3, 2000 ("Permit"). BHP Copper Company ("Permittee") has completed the pre-operational test that was required as a condition of the Permit and is nearing completion of a long-term reclamation test. Both tests have been very successful and both are prerequisite to further development of the in-situ mining process and the eventual construction of the permitted facility. While the testing has been largely accomplished, the actual mining operation has not yet begun.

Unfortunately, the economic climate and, especially, worldwide copper prices have not improved to the point that Permittee would be prepared to move forward with the Florence Project at this time. Therefore, Permittee is notifying ADEQ that it is temporarily ceasing operations for more than 60 days at the Florence Project pursuant to Arizona Administrative Code ("AAC") R18-9-A209(A)(1) and Part II, Subsection G of the Permit for the facility.

AAC R18-9-A209(A)(2) requires a permittee "to implement any measures specified in the individual permit for the temporary cessation." Besides written notice, Part II, Subsection G of the Permit specifies the following temporary cessation measures or conditions:

1. "If the temporary cessation will affect flow monitoring, the permittee must notify the ADEQ Aquifer Protection Permit Compliance of the change in operation."
2. "Notification of the temporary cessation does not relieve the permittee of any permit requirements unless otherwise specified in this permit."
3. "Accompanying the notification shall be a description of any measures to be taken to maintain discharge control systems such that discharge is minimized to the maximum extent practicable during temporary cessation."

Pursuant to the third permit condition above, Permittee is notifying ADEQ of the following

1. With regard to the discharge control systems, Permittee will maintain groundwater compliance monitoring and facility monitoring and inspection during the period of temporary cessation in the same manner as it has prior to this notice of temporary cessation.

In addition, Permittee agrees to the following conditions or measures during the period of temporary cessation:

1. Permittee will not engage in any activities or operations contemplated by the Permit at the facility that will or has the potential to increase the facility's closure costs.
2. Permittee will notify ADEQ of closure pursuant to AAC R18-9-A209(B)(1) if the duration of the temporary cessation for the facility under the Permit is for more than eight (8) years from the date of this notice.
3. Prior to resumption of mining activities at the facility, Permittee will demonstrate to ADEQ the financial and technical capability to construct, operate, close and assure proper post-closure care of the facility in compliance with Arizona Revised Statutes Title 49, Chapter 2, Article 3; AAC Title 18, Chapter 9, Article 1 and 2; and the conditions of the Permit.
4. So long as the Permittee remains the undersigned, the Permittee may unilaterally return the permitted facility to full operational status with 48 hours advanced written notice to ADEQ.

If you have any questions or concerns regarding this notice, please don't hesitate to give me a call at 520.498.4101.

Sincerely,

BHP COPPER INC.

Charles G Taylor  
Vice President Environment